

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 ANDREW KWASI DONKOR,) Case No. CV 19-0008-GW(JPR)
12)
13) Petitioner,)
14) ORDER SUMMARILY DISMISSING
15) v.) PETITION FOR WRIT OF HABEAS
16) CORPUS FOR LACK OF SUBJECT-MATTER
KENNETH C. BYRN et al.,) JURISDICTION
Respondents.)
_____)

17 On January 2, 2019, Petitioner filed a Habeas Corpus
18 Petition under 28 U.S.C. § 2254. It challenges his 2012
19 convictions and 14-year prison sentence in Los Angeles County
20 Superior Court for various sex-related offenses. (Pet. at 2.)

21 Petitioner has filed numerous habeas petitions in this Court
22 challenging the same convictions, including one that was denied
23 as untimely. See Donkor v. Holland, No. EDCV 14-01408-GW (DTB),
24 2016 WL 9131462, at *5 & n.4 (C.D. Cal. Dec. 28, 2016), accepted
25 in relevant part by 2017 WL 2562100, at *1 (C.D. Cal. June 12,
26 2017). Petitioner appealed to the Ninth Circuit Court of
27 Appeals, which declined to issue him a certificate of
28 appealability. See Donkor v. Sullivan, No. 17-56048 (9th Cir.

1 Jan. 31, 2018) (order denying certificate of appealability).

2 The Antiterrorism and Effective Death Penalty Act of 1996
3 provides, in 28 U.S.C. § 2244(b), as follows:

4 (1) A claim presented in a second or successive
5 habeas corpus application under section 2254 that was
6 presented in a prior application shall be dismissed.

7 (2) A claim presented in a second or successive
8 habeas corpus application under section 2254 that was not
9 presented in a prior application shall be dismissed
10 unless –

11 (A) the applicant shows that the claim relies
12 on a new rule of constitutional law, made
13 retroactive to cases on collateral review by the
14 Supreme Court, that was previously unavailable; or

15 (B) (i) the factual predicate for the claim
16 could not have been discovered previously through
17 the exercise of due diligence; and

18 (ii) the facts underlying the claim, if
19 proven and viewed in light of the evidence as
20 a whole, would be sufficient to establish by
21 clear and convincing evidence that, but for
22 constitutional error, no reasonable factfinder
23 would have found the applicant guilty of the
24 underlying offense.

25 (3) (A) Before a second or successive application
26 permitted by this section is filed in the district court,
27 the applicant shall move in the appropriate court of
28 appeals for an order authorizing the district court to


1 consider the application.

2 The pending Petition is a second or successive petition
3 within the meaning of § 2244(b) because it challenges the same
4 judgment of conviction as Petitioner's earlier habeas petition,
5 the denial of which was affirmed by the Ninth Circuit when it
6 refused to grant him a certificate of appealability. Under
7 § 2244(b)(3)(A), then, Petitioner was required to secure an order
8 from the Ninth Circuit authorizing the filing of his current
9 Petition. See McNabb v. Yates, 576 F.3d 1028, 1029 (9th Cir.
10 2009) (holding that even when first petition was dismissed as
11 untimely, subsequent petition is second or successive and
12 requires prior authorization to file). The Court's review of the
13 Ninth Circuit's docket indicates that Petitioner has never asked
14 for, much less received, permission from that court to file a
15 successive petition.

16 For the foregoing reasons, IT IS ORDERED that this action be
17 summarily dismissed under Rule 4 of the Rules Governing
18 § 2254 Cases in the U.S. District Courts.¹

19 LET JUDGMENT BE ENTERED ACCORDINGLY.

20 DATED: January 9, 2019



GEORGE H. WU
U.S. DISTRICT JUDGE

21 Presented by:

22 
23 _____
24 Jean Rosenbluth
25 U.S. Magistrate Judge

26 ¹ That rule states in pertinent part as follows: "If it
27 plainly appears from the petition and any attached exhibits that
28 the petitioner is not entitled to relief in the district court, the
judge must dismiss the petition and direct the clerk to notify the
petitioner."